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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for profit corporation; DOES 1 through 100, inclusive, Defendants.	CASE NO. 157 680 NOTICE OF HEARING ON DEMURRER TO COMPLAINT AND MOTION TO STRIKE; DEMURRER TO COMPLAINT; MOTION TO STRIKE AND DENY LEAVE TO AMEND;MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DATE: December 16, 1994 TIME: 9:00 A.M. PLACE: Department 1 TRIAL DATE: CONTINUED 5/18/95 DISCOVERY ENDED BY 30 DAY RULE

TO PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL AND TO ITS ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that the Demurrer of defendant SOLINA WALTON filed herewith is set for hearing on December 16, 1994 at 9:00 A.M., or as soon thereafter as the matter may be heard, in Department "1" of the Superior Court of the State of California, for the County of Marin, located at the Hall of Justice, Civic Center in San Rafael, California. In the alternative to sustaining the Demurrer, defendant will move to strike plaintiff's complaint and to deny leave to amend the complaint to name Solina Walton as a Doe defendant. This Demurrer will be based upon this Notice, Demurrer to Complaint, Motion to Strike or Deny

Leave to Amend and the Memorandum of Points and Authorities submitted herewith, on the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing including, but not limited to, any evidence of which the court may properly take judicial notice.

Dated: November 13, 1994 _____

Michael Walton

DEMURRER

Defendant SOLINA WALTON demurs to the complaint filed by plaintiff on the following grounds:

1. The complaint does not state facts sufficient to constitute causes of action in that the causes of action alleged in the complaint are barred by laches.

2. The unreasonable delay (laches) by plaintiff in naming Solina Walton as a Doe defendant in this matter has caused prejudice to said defendant.

WHEREFORE, Defendant prays:

1. That this demurrer be sustained without leave to amend;

2. The court enter an order striking the complaint with respect to Solina Walton and denying plaintiff leave to amend to name Solina Walton as a DOE defendant;

3. For costs of suit incurred herein;

4. For such other and further relief as the court deems proper.

Dated: November 14, 1994 _____

Michael Walton

MEMORANDUM OF POINTS AND AUTHORITIES

I.

A DEMURRER IS PROPER WHEN THE PLEADING DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION; LACHES MAY BE PROPERLY RAISED BY A GENERAL DEMURRER

Section 430.10 of the Code of Civil Procedure provides, in relevant part, as follows:

> "The party against whom a complaint...has been filed may object, by demurrer...to the pleading on any one or more of the following grounds:
>
> > (e) The pleading does not state facts sufficient to constitute a cause of action.

The grounds for the demurrer may appear on the face of the complaint or from any matter of which the court is required to or may take judicial notice. CCP 430.30(a).

Laches may be properly raised by a general demurrer. Stafford v. Ballinger (1962, 2nd Dist) 199 Cal App 2nd 289, 18 Cal Rptr 568.

II.

WHERE THERE IS UNREASONABLE DELAY IN SEEKING TO AMEND WHICH CAUSES PREJUDICE TO DEFENDANT, COURT OR PARTIES, COURT MAY DENY FILING OF DOE AMENDMENT

The court has discretion to deny leave to amend to name a person as a "DOE" defendant where there is evidence of laches; i.e., where "there is evidence of unreasonable delay by the plaintiff **or** specific prejudice to the defendant." (emphasis added) Sobeck & Associates, Inc. v. B & R Investments No. 24 (1989) 215 Cal.App.3d 861,870; 264 Cal.Rptr. 156. See also Barrows v.

American Motors Corp. (1983) 144 CA3d 1, 8, 192 CR 380, 383.

Plaintiffs filed the complaint which is the subject of this demurrer on July 23, 1993 . Defendant Gerald Armstrong was served on or about July 1993. Defendant Michael Walton was served on or about August 1, 1993. No other parties have been named and served. As may be seen by the court's file in this case, a substantial amount of activity has been completed and the parties have actively and aggressively litigated in the year and one-half since the commencement of the lawsuit. An enormous amount of discovery has been concluded, including exhaustive document productions, requests for admission, interrogatories, and depositions of plaintiff, responding parties and witnesses.

The trial date was set for September 29, 1994. Pursuant to C.C.P. Section 2024(a), discovery was cut off on August 30, 1994. The parties submitted their respective Settlement Conference Statements. On September 13, 1994, just 15 days before the date for trial of this matter and two weeks after discovery cut off, plaintiff served Solina Walton as DOE II to the instant action. Plaintiff's have had constructive knowledge of Solina Walton's interest in the Fawn Drive property which is the subject of this lawsuit since they filed a lis pendens on or about July 29, 1993- a period of almost fourteen months. Plaintiff also had actual notice by way of a noticed motion by Ms. Walton wherein this Court ordered, on October 29, 1993, that the lis pendens recorded by plaintiff against property owned by Ms. Walton be expunged. Plaintiff, although well aware of Ms. Walton's interest in the

property, waited until 15 days before the trial date and 15 days after discovery cutoff to name and serve her as a Doe defendant.

While waiting fourteen months to file a DOE amendment does not, in itself, constitute unreasonable delay, it is this particular fourteen months placed in the context of this litigation which makes it unreasonable. Ms. Walton has been effectively deprived from participating in the extensive, exhaustive and very expensive completed discovery procedure.

III.

CONTINUANCE OF A TRIAL DATE DOES NOT REOPEN DISCOVERY-C.C.P.2024

On September 16, 1994, this court continued the original trial date, September 29, 1994, until May 18, 1995.

Ms. Walton's exclusion from prior completed discovery effectively prohibited her from making timely objections which could have an adverse effect upon her ability to successfully defend against this action.

Simply allowing her to retake depositions would not give her the benefit of "the initial observation of witnesses" which is considered one of the primary reasons for oral deposition over written interrogatory or written deposition. Additionally, the element of spontaneity of response will have been eroded by any retaking. By allowing her to be named at this late date would require at a minimum that discovery be reopened as though anew. **And even then, without again continuing the trial date, Ms. Walton would be required to complete her discovery in four months while it took the other parties a year and one-half to conclude their**

discovery.

IV.

REOPENING DISCOVERY

C.C.P. Section 2024(e)1-4 provides in relevant part:

> "On motion of any party, the court may grant leave...to reopen discovery after a new trial date has been set...In exercising its discretion..., the court shall take into consideration any matter relevant to the leave requested, including, but not limited to, the following:
>
> (1) The necessity and the reasons for the discovery.
>
> (2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier.
>
> (3) Any likelihood that permitting discovery...will prevent the case from going to trial on the date set, or otherwise interfere with the court calendar, **or result in prejudice to any other party.**
>
> (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action." (Emphasis added).

At all times since the filing of this lawsuit, Ms. Walton has resided with her husband, defendant Michael Walton. Plaintiff can offer no legitimate reason for delaying the naming of Ms. Walton to the lawsuit until two weeks before the trial was scheduled to

begin.

It is inherently unfair to allow a party to complete its discovery, wait until discovery has closed, wait until two weeks before the trial, ask for a continuance of the trial, and then try to name more DOE defendants when the party knew the identity and the location of the would be DOE defendant from the outset.

It is particularly important in this situation to consider the relative economic strengths of the parties and the resultant burden on those less economically endowed than plaintiff when assessing the "prejudice to any other party" <CCP 2024(e)(3)> by plaintiff's unreasonable delay in naming Ms. Walton.

Allowing a party to file a Doe amendment at this juncture puts all parties back to "square one" with respect to the discovery process. Ms. Walton's interests and position are different from each of the other parties. The discovery aspect of this matter has required an enormous expenditure of attorney time and money. As the court is well aware, these considerations become extremely important in the litigation arena. Allowing the naming of a DOE defendant at this juncture would put an enormous strain on the resources of the other defendants and it is a tactic the plaintiff should be prohibited from employing. That the discovery period has been a particularly intense and highly contested one is exemplified by the large number of hours the court appointed Special Referee has spent in connection with this matter. It is unfair and against court policy to allow plaintiff to benefit from its lack of diligence to the prejudice of **all the other parties.**

It is also unlikely, given the history of this litigation, that Ms. Walton would be able to properly and thoroughly prepare her defense in time for the May 18, 1995 trial date and that the trial date would have to be continued.

V.

IN THE ALTERNATIVE TO THE DEMURRER, THE COMPLAINT SHOULD BE STRICKEN AND PLAINTIFF SHOULD BE DENIED LEAVE TO FILE A DOE AMENDMENT

Code of Civil Procedure Section 435(b)(1) provides:

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof."

Code of Civil Procedure Section 436 provides that :

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

This motion is based upon the arguments contained above and to conserve the court's time will not be repeated but will be fully incorporated herein.

Solina Walton has been prejudiced by plaintiff's unreasonable delay in naming her as a DOE defendant. Ms. Walton has been effectively denied participation in the completed discovery in this matter. Reopening discovery would not alleviate the prejudice to her from having not been able to participate in what has already been done. Reopening discovery would put an enormous financial burden on the other defendants. One of the other defendants is Michael Walton, Solina Walton's husband. Had plaintiff timely named

Ms. Walton, many of the completed litigation and discovery aspects of this matter might have been shared by the Waltons; by their unreasonable delay in naming Ms. Walton, plaintiff effectively "doubles" the cost of litigation to the family. This pressure on the time and economic reserves would result in real prejudice to all defendants and should not be allowed without good and just cause.

If plaintiff is not precluded from naming Ms. Walton as a DOE defendant at this late date, the trial date currently set for May 1995, will, in all probability, have to be continued.

WHEREFORE, Solina Walton prays:

1. That plaintiff take nothing by its complaint;

2. That this demurrer be sustained without leave to amend

3. That plaintiff be denied leave to name Solina Walton as a DOE defendant;

4. That plaintiff's complaint be stricken with prejudice;

5. For costs of suit incurred herein;

6. For such other and further relief as the court deems proper.

Dated: November 14, 1994

/S/

Michael Walton

PROOF OF SERVICE BY MAIL
STATE OF CALIFORNIA, COUNTY OF MARIN

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 700 Larkspur Landing Circle, Suite 120, Larkspur, California 94939.

On November 14, 1994, I served the within NOTICE OF HEARING ON DEMURRER TO COMPLAINT AND MOTION TO STRIKE; DEMURRER TO COMPLAINT and MOTION TO STRIKE AND TO DENY PLAINTIFF LEAVE TO AMEND; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at Larkspur, California addressed as follows:

Laurie J. Bartilson
Bowles & Moxon
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Ford Greene, Esq.
711 Sir Francis Drake
San Anselmo, CA 94960

Executed on November 14, 1994 at Larkspur, California.

I declare under penalty of perjury that the foregoing is true and correct.

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